

Appl. No. 09/334,671
Amdnt. dated June 2, 2005
Submitted as RCE

REMARKS / ARGUMENTS

Pursuant to MPEP 1214.07 an RCE may be filed after the Board's decision for consideration by the Examiner. This MPEP reads as follows:

"Sometimes an amendment is filed after the Board's decision which does not carry into effect any recommendation made by the Board and which presents a new or amended claim or claims. In view of the fact that the prosecution is closed, the appellant is not entitled to have such amendment entered as a matter of right. However, if the amendment is submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), the prosecution of the application will be reopened and the amendment will be entered. See MPEP § 706.07(h), paragraph XI. Note that the RCE practice under 37 CFR 1.114 does not apply to utility or plant patent applications filed before June 8, 1995 or to design applications. See 37 CFR 1.114(d) and MPEP § 706.07(h), paragraph I. If the amendment obviously places an application in condition for allowance, regardless of whether the amendment is filed with an RCE, the primary examiner should recommend that the amendment be admitted, and with the concurrence of the supervisory patent examiner, the amendment will be entered. Note MPEP § 1002.02(d).

"Where the amendment cannot be entered, the examiner should write to the appellant indicating that the amendment cannot be entered and stating the reason why. The refusal may not be arbitrary or capricious."

Accordingly applicant now submits and amended set of claims in which claim 1 incorporates the subject matter of prior claims 6 and 12, in order to correspond to claim 12 which has been allowed by the Appeal Board.

Claims 6 and 12 have been cancelled as well as claim 13 which was already cancelled previously.

All the remaining claims, namely claims 2-5, claims 7-11 and claims 14-21 now refer directly or indirectly to claim 1 which was found allowable by the Board and for this reason, they should also be found allowable.

It is believed that the amendment to the claims submitted in this RCE clearly satisfied the requirements of MPEP 1214.07 since it obviously places this application in condition for allowance. Entry of the amendment and allowance of the application are therefore solicited.

Respectfully submitted,



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